



## INDEPENDENT MEDIA COUNCIL

### Decision No. 40

**about alleged failure of journalistic standards in the article "Real estate in the "LNR ", boxes with cash, palace-like apartments and "royal" estates, to name a few items in the declarations of Cherkasy judges"**

Kyiv

March 31, 2020

#### **I. The circumstances of the case**

1. On December 9, 2019, the Independent Media Council received a petition letter from eight judges of the Sosnivsky District Court of Cherkasy regarding unprofessional actions on the part of the journalists of online editions [Dzvin](#), [Ukrainian News](#) and [SK News](#) that published the article "Real estate in the "LNR", boxes with cash, palace-like apartments and "royal" estates, to name a few items in the declarations of Cherkasy judges" on November 27. The article contains superficial analysis of the declarations of the following judges: O.M.Boreyko, V.L.Kalashnyk, O.I.Konchyna, Y.V.Peresunko, Y.V.Ryabukha, I.O.Melnyk, S.E.Tokova, and T.Y.Troyan.
2. On January 9, 2020, in accordance with paragraph 12 of the Regulations on the Independent Media Council, the Independent Media Council declared the case **admissible** taking into account the need to adhere to journalistic standards when covering information about judges and ensuring their independence. The [freedom](#) to speak and write on matters of importance about society, government and public officials is thus an inescapable necessity of democracy. At the same time, an independent judiciary is necessary to uphold the rights enshrined in the Constitution protecting all persons, regardless of their status as majority or minority in democracy. Furthermore, the Independent Media Council's decision on admissibility is based on the need to outline the specific aspects of journalistic coverage of the activities of judges and the matters of independence and authority of judges' status.

3. In his article, published by Cherkasy-based media Dzvin and later reproduced by anonymous resources [Ukrainian News](#) and [SK News](#), the journalist uses data from the declarations of the judges of the Sosnivskyi District Court of Cherkasy indicating beforehand that he conducts a "superficial analysis". The author specifically focuses on the judges' real estate and assets, including bank accounts and credit funds, providing screenshots of the judges' electronic declarations. Following such an introduction, the author suggests that readers independently make judgments about the judges' honesty toward society and the legitimacy of their possessions.
4. With regard to Judge O.M. Boreyko, the following information is provided: *"According to her declaration, in addition to the Lexus RX-300 purchased for almost half a million, Judge Olena Mykolayivna Boreyko lives in two huge apartments of 184 and 175 square meters. Such extraordinarily large apartments in Cherkasy cost about UAH 4-7 million."* Judge O.M. Boreyko was appointed by [Presidential Decree No.13/2014](#) dated January 17, 2014. According to her [declaration](#), the car was purchased in 2008 and the two apartments in 2010 and 2004, respectively.
5. With regard to Judge O.I. Konchyna, the author writes the following: *We may also rejoice at the living conditions of another judge, Olha Ivanivna Konchyna. This spring, she and her husband have purchased a large 200-square-meter house in Cherkasy standing on a plot of land of 1,000 square meters. The land and the large house cost the judge's family only about \$ 48,000. So one can rejoice at such a successful purchase since the average market price in Cherkasy of such estates is way higher. We hope that this is simply a good coincidence and not a tax evasion scheme. The judge's family owns another mansion in Cherkasy of about 300 square meters on a slightly smaller plot of land. Of course, one can only sympathize with the Konchynas because of the price of their utility bills for two mansions of almost 500 square meters."* Judge O.I. Konchyna was appointed by [Presidential Decree No.246/2011](#) dated February 24, 2011. According to her [declaration](#), the right to reside in the 277.2-square-meter house was granted in 2010 and the right to use the 204.2-square-meter house in 2019.
6. With regard to Judge V.L. Kalashnyk, the following information is made public: *"Yet, amid the judges of the Cherkasy Sosnivsky District Court, one can find not only those inclined to luxury but also true ascetics. Judge Volodymyr Leonidovych Kalashnyk counts every hryvnia, even though amounts of up to one hundred thousand hryvnias may not be declared. We hope that Volodymyr Leonidovych declares 14 and 46 hryvnias on his card accounts purely out of inborn pedantry and that he doesn't live in complete misery counting every penny. We are also convinced that one week after the so-called "LNR" declared independence this Cherkasy judge became the owner of an apartment in the occupied Luhansk merely due to his patriotic position. In the meantime, Volodymyr Kalashnyk counts every hryvnia cooped up in a tiny rented apartment in Cherkasy. Despite the solid judges' monthly salary of UAH 30,000-40,000 and even more solid desire for elite housing on the part of his fellow judges, Volodymyr Leonidovych's declaration convinces us that he is leading a totally ascetic life."* Judge V.L. Kalashnyk was transferred from the occupied territory of Luhansk Oblast to the

Cherkasy Sosnivskyi District Court by [Presidential Decree No.564/2015](#) dated September 26, 2015. Also, the following is written with regard to Judge Y.V.Ryabukha: *“Judge Yuriy Volodymyrovich Ryabukha is not an ascetic, so he, too, became the owner of a large house two years ago in the already long occupied Luhansk. We hope that this was some sort of inheritance out of necessity rather than investing in real estate in the “young Putin Republic”. Judge Ryabukha’s family’s official salary of UAH 600,000 per annum is obviously not enough to cover today’s life expenses and especially utility bills. So, Yuriy Volodymyrovych’s spouse helps a bit to fill family budget shortfalls probably by successfully playing lottery or gambling.”* Judge Y.V.Ryabukha was transferred from the occupied territory of Luhansk Oblast to the Cherkasy Sosnivskyi District Court by [Presidential Decree No.82/2015](#) dated February 14, 2015. Regarding the judges’ property on the temporarily occupied territories, the judges’ petition letter to the IMC contains information that the apartments of the two judges were inherited and received as a gift from their parents.

7. The following is written with regard to Judge Y.V.Peresunko: *“No living space-related problem will ever arise if one follows the example of their colleague **Judge Yaroslav Volodymyrovych Peresunko**. Together with his family members, he has got nine apartments, mainly in Kyiv and in the metropolitan area in Vyshhorod. You can see the long list of the Peresunko family’s real estate [HERE](#)”*. According to his [declaration](#), the judge has the right to use four apartments acquired in 2012, 2013, 2014 and 2016 by virtue of the registration owning 33.3% of the apartment acquired under the joint ownership in 1998, and also having the right to use four apartments acquired in 2018 for free. Judge Y.V.Peresunko was appointed by [Presidential Decree No.410/2016](#) dated September 24, 2016.
8. With regard to judges S.Y.Tokova, I.O.Melnyk, and T.Y.Troyan, the following is written: *“It is noteworthy that even a good monthly salary of UAH 30,000-40,000 by Cherkasy standards is still by far not sufficient for some Cherkasy judges. **Judges Svitlana Yevhenivna Tokova, Iryna Oleksandrivna Melnyk and Tetyana Yevhenivna Troyan** took bank loans for over one million hryvnias.”* According to T.Y.Troyan’s [declaration](#), the judge got the loan in 2005. She was appointed to her position by [Presidential Decree No.570/2013](#) dated October 18, 2013.

## II. Regulation

### 1. [Constitution of Ukraine](#)

**Article 34.** Everyone is guaranteed the right to freedom of thought and speech, and to the free expression of his or her views and beliefs.

Everyone has the right to freely collect, store, use and disseminate information by oral, written or other means of his or her choice.

The exercise of these rights may be restricted by law in the interests of national security, territorial indivisibility or public order, with the purpose of preventing disturbances or

crimes, protecting the health of the population, the reputation or rights of other persons, preventing the publication of information received confidentially, or supporting the authority and impartiality of justice.

## 2. International Covenant on Civil and Political Rights

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
  - (a) For respect of the rights or reputations of others;
  - (b) For the protection of national security or of public order (ordre public), or of public health or morals.

## 3. The Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights)

### **Article 10. Freedom of expression**

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or **for maintaining the authority and impartiality of the judiciary**.

### **Article 6. Right to a fair trial**

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a **fair and public hearing** within a reasonable

time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:

(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

(b) to have adequate time and facilities for the preparation of his defence;

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court

#### **4. Code of Ethics of the Ukrainian Journalist**

**6. Respecting the public's right to full and objective information on facts and events is the first journalistic duty.**

Respecting public's right to full and objective information on facts and events is the first journalistic duty. Journalists and editors shall take steps to check reliability of all reports, video- and audio materials coming from the public, freelancers, press service and other sources.

**8. Editorial processing of materials including pictures, texts, headlines, correspondence between video and scripts, etc. shall not distort the content of the material.**

Editorial processing of materials including pictures, texts, headlines, correspondence between video and scripts, etc. shall not distort the content of the material. The journalist shall notify the audience of rehearsed or reconstructed news

**9. Facts, judgments and assumptions have to be clearly separated from one another.**

Facts, judgments and assumptions have to be clearly separated from one another. Disseminating information containing biased or groundless accusations is inadmissible.

**19. Deliberate violation of the ethics code is wholly incompatible with professional journalism**

Deliberate violation of the ethics code is wholly incompatible with professional journalism; it falls under public condemnation and can be reason to revoke one's press-card and membership in trade unions or in the National Union of Journalists of Ukraine. Ethical or professional conflict situations are considered by the Commission on Journalism Ethics.

**III. Assessment of journalists' compliance with legislation and professional standards**

1. Independence and impartiality of the judiciary is one of the key features of democracy. Enjoying fundamental rights as public persons, the judges have the powers and responsibilities that can justify imposing certain restrictions on their fundamental freedoms. Furthermore, it may also be justified by the importance of maintaining public confidence in the judiciary and its authority. Therefore, both the European Convention and the Constitution recognize the legitimate aim of interfering with freedom of expression to uphold the authority and impartiality of the court. Hence, in the context of freedom of expression in the field of justice, there are a number of restrictions that may narrow the freedoms granted. This concerns both the judges' expressing their opinions, providing commentary on litigation, and criticizing its participants, and the journalists' covering these stories. This was rightly emphasized by the European Court of Human Rights in its classic case [Sunday Times v. The United Kingdom](#) (para. 65) recognizing that the courts "cannot operate in a vacuum. Whilst they are the forum for the settlement of disputes, this does not mean that there can be no prior discussion of disputes elsewhere, be it in specialized journals, in the general press or amongst the public at large. Furthermore, whilst the mass media must not overstep the bounds imposed in the interests of the proper administration of justice, it is incumbent on them to impart information and ideas concerning matters that come before the courts just as in other areas **of public interest**".
2. Another aspect is criticizing judges. The standards of freedom of expression clearly indicate that "civil servants acting in an official capacity are, like politicians, subject to wider limits of acceptable criticism than private individuals" ([Thoma v. Luxemburg](#), para. 47). At the same time, not being a civil servant, a judge has a special status enjoying a high level of trust in society which can be covered by the definition of "a figure of contemporary society par excellence" ([Von Hannover v. Germany](#)). However, when it comes to being a judge in a district court, questions arise with regard to the level of publicity. It also proves that covering judges' activities, particularly during



court proceedings, may have its own peculiarities (*Sunday Times v. UK*, *Morice v. France*, *Nikula v. Finland*). It is generally recognized that restrictions on freedom of expression may be admissible if this is necessary to safeguard the authority of a judge, as indicated in the [Report of the Special Rapporteur on the independence of judges and lawyers](#) of the UN Human Rights Committee of 29 April 2019 (para. 52). At the same time, in [De Haes and Gijssels v. Belgium](#) (37) it is emphasized that “the courts - the guarantors of justice, whose role is fundamental in a State based on the rule of law - must enjoy public confidence. They must accordingly be protected from destructive attacks that are unfounded, especially in view of the fact that judges are subject to a duty of discretion that precludes them from replying to criticism”. The above-mentioned case concerned punishing the journalists whose critical publication about judges “raised serious doubts about the judges’ impartiality”. The European Court found such acts a violation of freedom of expression since the aforementioned articles were part of a public debate and were therefore necessary in a democratic society. Furthermore, the ECHR drew attention to the fact that the authors **had undertaken sufficient research and sought the opinion of several experts** which enabled them to base the articles on objective evidence (paragraph 34). The public interest criterion may also outweigh the impossibility for judges to exercise the full scope of the right to freedom of expression, as affirmed by the ECHR, in particular, in [Kudeshkina v. Russia](#) (para. 94), as well as in the Ukrainian [Judge Larysa Holnyk's case](#).

3. Special attention should be paid to monitoring the activities of judges and their lifestyles. This is encompassed by the openness and transparency of the court proceedings, the judges’ obligation to declare their property and family connections, and transparent competition or qualification assessments. The information provided is stored in the form of open data on statutory resources. Thus, such data are public and free for use. This option allows for the role of “public watchdog” to be exercised not only by the press but also by NGOs that draw attention to matters of public interest (*Magyar Helsinki Bizottsag v. Hungary* (para. 166). Furthermore, considering the cases related to processing open data, the European Court of Justice defined a specific term, data journalism, aimed at making available information more useful and user-friendly. However, in collecting and processing open data containing, in particular, personal data of individuals, the ECHR found that data journalism not aimed at analyzing data to address matters of public interest but merely satisfying readers’ interest breach the right to privacy (*Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC]). Thus, although the above-mentioned decision may have a significant “cooling effect” on the organizations analyzing a large array of data to make them convenient and user-friendly, it is also a reminder that such activities are important with regard to topics of public interest. This case also emphasizes the depth and quality of analysis that can be carried out.
4. Another problem arising in the context of writing about the activities and lifestyle of judges is the quality of publication. First of all, it has to do with sensationalism of the materials. Indeed, the right to freedom of expression also protects ideas that **offend, shock or disturb** (*Handyside, Stoll* (§ 101), *Morice* [GC] (§ 124), *Pentikäinen* (§ 87),

[Bédat \[GC\]](#) (§48) ). Despite this, "we have consistently required that the press have a free hand, even though we sometimes deplored its sensationalism" ([Sheppard v. Maxwell](#), U.S. Supreme Court, 1966). This is also reaffirmed by the ECHR where in [Bédat v. Switzerland \[GC\]](#) the court developed criteria to assess the need for interference with rights, including the secrecy of pretrial investigation. It included the content of an article emphasizing sensationalism of the materials published. For example, this applies to titles that authors select for their articles. Thus, in [Salumäki v. Finland](#) (para. 48) the issue under consideration was whether the headline of an article in the newspaper that could be interpreted as infringing on the reputation of a public figure could justify the criminal conviction of the journalist who wrote the article, while the article itself was written in good faith and did not contain errors or defamatory statements. In this case, the Court noted that the article concerned a public figure whose limits of permissible criticism are wider and such individuals should display a greater degree of tolerance. Furthermore, according to the [Code of Ethics of the Ukrainian Journalist](#), editorial processing of materials, including photographs, texts, headlines, correspondence between video and textual content, etc. should not falsify the content.

5. Analyzing the legal framework regarding the article published on the three online resources - "Real estate in the LNR", boxes full of money, palace-like apartments and "royal" estates, to name a few in the declarations of Cherkasy judges" - we can conclude as follows. First of all, with regard to ensuring independence and impartiality of the judiciary. Indeed, maintaining public confidence in the court is one of the important factors, especially when it comes to restricting freedom of expression, but the article in question did not contain analysis of their activities as judges. The publication covered only personal property, the author used open sources but carried out a wholly superficial analysis that does not allow for objective conclusions, as stated by the author himself in the first paragraph where he suggests that readers draw their own conclusions. However, the author does not provide sufficient factual basis. Specifically, describing the real estate owned by Judge Olha Ivanivna Konchyna, the author writes about the housing prices in Cherkasy as follows: "The plot of land and the big house cost the judge's family about USD 48,000. Therefore, one can rejoice at such a successful purchase, **since the average market prices in Cherkasy for such estates are way higher**. We hope this is just a good coincidence and not a tax evasion scheme." Doing so, the author does not indicate the source of information about the average market prices in the city, nor does he specify the conversion rate to determine the price. These facts indicate that there is insufficient analysis to draw objective conclusions accompanied by sensational language. The emotional statements accompanying the excerpts from the judges' declarations should be considered too, as clearly confirmed by the first sentence: "Someone is up to their eyebrows in debt and someone has boxes with cash, giant apartments and mansions, and real estate in the "LNR." Nevertheless, the author uses reliable information supplying critical evaluations of the data obtained. The question arises, however, as to publicity of these individuals since the judges of a district court do not have the degree of publicity to be identified as "figures of contemporary society par excellence". It should be noted that Dzvin, where the article



originally appeared, is a regional online resource publishing content about Cherkasy region. Therefore, articles about the Cherkasy judges' lifestyles may attract plenty of public interest within the community of Cherkasy region. Consequently, although the language used with regard to the judges is rather harsh and incorrect, it remains part of the freedom of expression without offending the honor and dignity of the judges.

6. The main issue lies in the violation of journalistic standards and the quality of the publication. The information presented is completely unbalanced since the author of the article does not mention any source other than the declarations register on which he bases his conclusions. The author did not ask for commentary about the assets mentioned in the article from the judges, the heroes of his publication. At least, there is no mention of such attempts in the article. It is also impossible not to emphasize the problem of the information imparted being incomplete, as evidenced by the assumptions made in the article: the author assumes that the prize (UAH 621) declared by the spouse of Judge Yuriy Volodymyrovych Ryabukha may have come from a lottery or some other gambling activity, and that Judges Svitlana Yevhenivna Tokova, Iryna Oleksandrivna Melnyk and Tetiana Yevhenivna Troyan were "really hard up" given the size of their declared loans and "good judge's salary of UAH 30,000-40,000, by Cherkasy standards". It should also be mentioned that, analyzing the judges' real estate in the "LNR", the author "was hoping" that it would have been an inheritance out of necessity rather than an investment in real estate of the "young Putin Republic." Of course, these value judgments are protected by the freedom of expression, but with a more professional search and collection of information, the author could have explained the origin of the property. From this it follows that the author indeed failed to present a balanced approach (i.e. the judges' commentary) and complete information, but his judgments in the material with regard to the judges are not completely without factual basis, even though they seem disputable being based on unbalanced and incomplete material.
7. The resources that published the article about the judges should also be given attention. The article was published on at least three online resources, namely [Dzvin](#), [Ukrainian News](#) and [SK News](#). Information on Dzvin is available in the [State Register of Printed Media and Information Agencies as Subjects of Information Activity](#) and their site contains a contacts section indicating the founder, editor-in-chief, telephone, email and address. Ukrainian News and SK News are completely anonymous, with the former having a Russian-language interface and no contacts, and the latter only having links to a telegram channel.
8. The Independent Media Council emphasizes that analysis of the contents of publications requires a proper journalistic investigation which should dot the i's and cross the t's, including whether violations were there or not. At the same time, the Independent Media Council emphasizes that such superficial investigations pose a considerable risk to independent journalism by undermining confidence and degrading the genre of journalistic investigations to the level of yellow press and tabloids. Undermining trust in the media is also a threat to freedom of expression and democracy

because in the cases of considerable public interest and significance the voice of the media will be tarnished.

9. Based on this, we can conclude that the author violated the principles of balanced and complete information: principles 6 (full information), 9 (inadmissibility of biased information containing prejudice and groundless accusations), 10 (objects of journalistic criticism to be presented in a balanced way) of the [Code of Ethics of the Ukrainian Journalist](#), and Article 2 (principle of full and reliable information) of the Law on Information.

#### IV. Conclusions

The Independent Media Council is of the opinion that

1. in the article **"Real estate in the "LNR ", boxes with cash, palace-like apartments and "royal" estates: to name a few items in the declarations of Cherkasy judges"** published on November 27, 2019 on the regional online resource Dzvyn and republished by Ukrainian News and SK News, the principles of balanced and complete information: principles 6 (full information), 9 (inadmissibility of biased information containing prejudice and groundless accusations), 10 (objects of journalistic criticism to be presented in a balanced way) of the [Code of Ethics of the Ukrainian Journalist](#), and Article 2 (principle of full and reliable information) of the Law on Information.

Votes:

«In favor» — 9

«Against» — 0

«Abstained» — 3

Head of the Independent Media Council



T. Shevchenko

Secretary of the Independent Media Council



O. Holub

Secretary of the Independent Media Council



P. Moiseyev